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| APPLICATION NO.                                                               | FILING DATE | FIRST NAMED INVENTOR      | ATTORNEY DOCKET NO.    | CONFIRMATION NO. |
|-------------------------------------------------------------------------------|-------------|---------------------------|------------------------|------------------|
| 10/757.717                                                                    | 01/14/2004  | Jose Luis Navarro Herrero | 2429-1-030             | 3836             |
| 7590 11/02/2004                                                               |             |                           | EXAMINER               |                  |
| KLAUBER & JACKSON<br>4th Fl.<br>411 Hackensack Avenue<br>Hackensack, NJ 07601 |             |                           | ROSENBERGER, RICHARD A |                  |
|                                                                               |             |                           | ART UNIT               | PAPER NUMBER     |
|                                                                               |             |                           | 2877                   |                  |

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/757,717

Applicant(s)

NAVARRO HERRERO ET AL.

Examiner

Richard A Rosenberger

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what an "IT adjuster" is.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1- 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonsson (US 3,674,370) in view of Sweet (US 2,594,514), Pross (US 4,037,972) and Beer (US 3,489,906).

Jonsson show that is it known to optically analyze a fluid by passing the fluid through a sample area (15) and comparing the measured results to a standard held in s reference container (25). It would have been obvious to use this general arrangement to determine any characteristic of a fluid which can be detected by optical means and the measurements analyzed by appropriate mathematical

algorithms. The choice of particular light sources, detectors, sample cells, algorithms and the like appropriate to the particular application at hand would have been obvious.

While Jonsson shows using a “conventional current-comparing unit 28” to determine the measurement value, it is known in the art that other arrangements can be made to determine the measurement value. It is known in the art to make such measurements by adjusting the intensity of the light source to balance the measured intensity of the two light paths, using a measure of the intensity of the adjusted light as a measure of the absorption of the light. Sweet shows such a system, in which one of two light sources are varied to match the intensities. Pross shows such a system in which the light intensity directed through the measuring path is adjusted for this purpose. Beer also shows a system in which the light intensities are varied to match the detected light between a sample (3) and a reference (4). It would have been obvious to use such a known system of measuring to measure this absorption by adjusting the light intensities in a system such as shown by Jonsson because it is a known manner of making such measurements. As shown by Sweet, adjusting the light path by varying the current to the light source is known; Beer shows it is known to automate the process.

5. Carver (US 5,699,156) shows a system in which a fluid sample is passed through a sample cell for optical analysis.

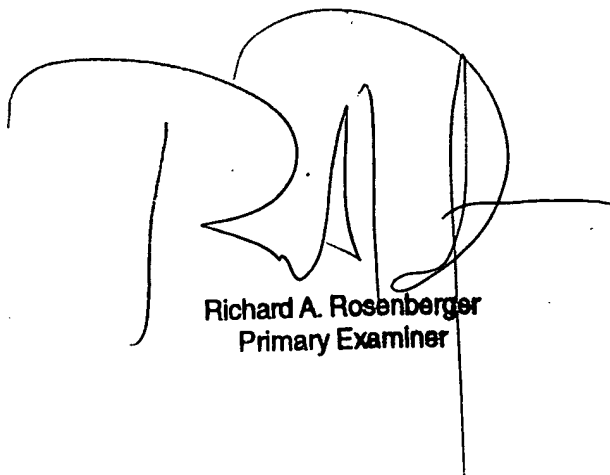
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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger  
30 October 2004



Richard A. Rosenberger  
Primary Examiner